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# Finding the Right Setting Models for International Civil Laws

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**Abstract.** As a rule of law, Indonesia will organize an orderly life and life in society, as a nation and state using just legal rules. The Indonesian people will build an order of life together within the framework of a democratic Indonesian state based on a just national legal order. Thus, the development of the nation and state must also be accompanied by legal development. As a country that inherits the legal tradition of continental Europe, the development of legislation is central to legal development the need to find the relationship between the setting model and the international civil laws principles was tested and results in data are analysis by the questionnaire were distributed among stakeholders. The results show that there are a significant correlation and effect between the two variables of the study and lead to the conclusion that a significant correlation and impact of the right models' dimensions in supporting the right civil laws.

**Keywords:** Setting models, International. Civil Laws.

## 1 Introduction

Indonesia is at a crossroads between choosing the western version of the legal development path or the original Indonesian legal development path [1]. The replacement of the justice logo from the goddess of justice to the tree of protection in 1965 turned out to only be a symbolism to break away from the western version of legal development [2]. Supposedly, this symbolism was followed by a model of legal development based on the law of protection as well [3]-[5].

With the emergence of Soeharto's New Order regime, a basic understanding of law in an instrumentalist sense later found its place. In this period, law as a means of development became a mainstream school in the development of Indonesian law. However, this legal development was not complete in replacing colonial law with Indonesian national law [6],[7].

In the 2019-2024 National Legislation Program Longlist (Prolegnas), one of the Drafts on International Civil Law (RUU HPI) was submitted. The submission of the HPI Law in the longlist is intended as a form of protection of human rights and law, as well as providing legal certainty for Indonesian citizens. In addition, the absence of specific legislation on HPI in Indonesia hampers economic activity in Indonesia and reduces the attractiveness of Indonesia as an investment destination. Therefore, the HPI Law was proposed in the 2019-2024 Prolegnas longlist to address the gaps as mentioned. However, it is also necessary to pay attention to the Legal Politics of the HPI Law as a separate Law and the proper model in its regulation. Constitutionally, the HPI Law is an embodiment of the principles of a rule of law and human rights guarantees [8]. Call it the right of everyone to recognition, guarantee, protection and legal certainty that is just and equal treatment before the law. With the high intensity of Indonesian citizens and citizens of other countries to have legal relations with each other, of course this will have implications for potential disputes that will arise in the future as long as the legal

relationship lasts. Meanwhile, civil law relations involving foreign elements are vulnerable to problems in the context of jurisdiction, choice of law, and legal decisions that can protect these legal relationships. The principle of a rule of law and several human rights provisions in the 1945 Constitution of the Republic of Indonesia can thus be considered as consideration for the HPI Law [9].

Moreover, the Indonesian constitution has also emphasized<sup>3</sup> that the protection, advancement, enforcement and fulfillment of human rights are the responsibility of the state, especially the government. Therefore, the proposed HPI Law by the government in the 2019-2024 Prolegnas longlist can be considered valid, and has a real constitutional basis as has been stated in the previous paragraphs in this section of this study.

## 2 Methodology

The present paper looks in more details at the upcoming regulation of the rights from faulty performance of purchase contracts and examines the complaints of defected performance. The first feedback and reviews on the new rules brought by the civil laws and applied by the practice, as well as the reaction provided by the case-law of national courts suggest that in the achievement of the established goal<sup>1</sup> to increase the transparency of the procedure of complaints<sup>1</sup> the new codification got stuck in the halfway. As we may see when comparing the previous and the current regulations, the civil laws rules are based on the rules contained in the former Commercial Code. Therefore, it seems to be useful for our paper to analyse and compare the impact of the new legislation as perceived from the perspective of the merchandisers on one side and from the perspective of the consumers and/or the public authorities (trade inspection).<sup>1</sup> We will use the method of functional analysis as well as the method of legal formalistic comparison.

## 3 Results and Discussion

This section identifies and describes the research variables based on the hypothetical model of the study, as well as elucidating the correlation and impact between the two variables.

### 3.1 Identification and Description of study variables

**Legal Politics of the HPI Law.** As previously explained, the development of national laws governing HPI is still not finished. With regard to the HPI arrangement, currently Indonesia still relies on three old articles inherited from the Dutch East Indies, namely Articles 16, 17 and 18 AB. Therefore, the legal politics that characterize the HPI Law must be to fill the legal vacuum due to the very rapid development of the world. In addition, at the same time, they must maintain the substance of the regulations to be within the corridor of Indonesia's legal sovereignty [10].

Therefore, the regulatory formulation in the HPI Law must be careful in using norms, especially in terms of court authority because it has different implications. For example, in the regulation of Article 7 paragraph (2) and Article 12 paragraph (1), norms must be used which means a binding obligation [11]. In one sense this can be good because it provides legal obligations but on the other hand it can create the potential for unconstitutionality of norms because HPI will be related to foreign elements and thus related to the rule of law and the court's sovereignty in deciding cases. This of course will have the potential to conflict with the provisions in the Constitution, especially the judicial power and at the level of the law has the



potential to conflict with the Law on Judicial Power. Therefore, it is necessary to rethink the choices of these norms, for example, as much as possible to use the word can in terms of providing regulatory norms to the court as has been done in several regulations in the HPI Law [12].

### 3.2 Appropriate Setting Model

**Potential of Disharmonizing.** HPI-related regulations are scattered in many laws, namely, Law no. 48 of 2009 concerning Judicial Power, Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, the Marriage Law, the Citizenship Law, and the Laws related to economic activities. The law is of course closely related to the HPI issues which include jurisdiction, choice of law, and recognition of decisions by foreign courts.

Therefore, the drafting of the HPI Law must be carried out with great care because the potential for conflict with existing or previously existing laws is very high. This is important because Indonesia does not recognize umbrella laws or basic laws so that each law is parallel to other laws [13].

Therefore, the HPI Law needs to pay attention to harmonization with other laws in detail. In fact, if you look at the existing NA, the order for harmonization with the Sectoral Law already exists but has not been fully manifested in the list of regulations in other laws. The harmonization is not just the alignment of the load material which is only skin deep, but it is necessary to see whether the regulatory substance has the potential to overlap with other arrangements.

For example, in implementing a foreign decision, is it in accordance with the Law on Judicial Power. The Law on Judicial Power provides large and central authority to the judiciary in enforcing laws in Indonesia. Therefore, the provisions which give recognition to the rule of law, the legal system and the enforcement of foreign decisions must take into account the powers of the existing judiciary.

This regulation must be careful because it relates to Indonesia's sovereignty and is closely related to the potential for a lawsuit against the constitutional review in the Constitutional Court. In this context, the team should collect material content from the HPI Law which has a slice of content with the existing laws. The most important thing is to pay attention to the Law on Judicial Power and the Sectoral Law which regulates the recognition of legal rules, the legal system, and the enforcement of decisions.

Apart from that, another dimension that is very important is the consistency of definitions which must be uniform in all Horizontal Laws. This definition cannot be underestimated because the Cooperative Law was completely annulled by the Constitutional Court because the definition is contrary to the constitution. In the HPI Law, there are many definitions that we must review again in the Sectoral Law so that they are uniform and do not conflict with each other.

### 3.3 Model of Law Management

In order to accommodate strategies to avoid potential disharmony as mentioned previously, there are 3 models that can be used:

- a. the first model is to use a system of filling legal gaps between existing laws. This model was used in the Indigenous Peoples' Rights Law proposed by the DPD; In this model, the HPI Law in its regulation uses two stages: the first stage is to first fill in the blank arrangements, and the second stage to appoint norms in other existing laws. This model

requires a cluster of HPI regulations in a thorough sectoral law so that the distribution of norms in this system will complement each other.

- b. the second model is a partial codification system such as the Election Law. In this model, the law must also focus on certain clumps of regulation so that there are several books in one law that can accommodate the arrangement according to its clumps. If you look at the entirety of the HPI Law, the most suitable thing is partial codification considering the content to be regulated. In this case, the Pandecta Codification model can be followed by including the general provisions in the FIRST BOOK and so on.
- c. the third model uses the Omnibus technique which is exemplified in the Job Creation Law by changing and deleting provisions in other laws (rejection will be large because it changes the major structure in the legal system).

For example, in the Law on Judicial Powers, chapter x, an article on the implementation of foreign court decisions is added with certain conditions, or in the Arbitration Law which provides conditions for the implementation of enforceable foreign arbitral awards.

### 3.4 Llegal Drafting Techniques

On the other hand, improvements in the context of the technique of drafting laws and regulations must be made. This is because the constitutionality test is not only carried out materially but also can be carried out formally. As stipulated in the 1945 Constitution of the Republic of Indonesia, the provisions of Articles 20, 22 and 22A. Article 22A of the 1945 Constitution of the Republic of Indonesia delegates that the procedures for the formation of laws to be regulated by law. This provision was what gave birth to Law no. 12 of 2011 concerning the Formation of Legislation (UU P3).

The P3 Law will later also become the benchmark in formal testing. Thus, the preparation of all laws and regulations must comply with the drafting techniques specified in the P3 Law. However, based on the author's observations on the HPI Law, there are still many inconsistencies in the drafting techniques in the HPI Law.

Just mention the general provisions intended to regulate the definition or definition, abbreviation or acronym set forth in the definition or definition; and / or, other matters of a general nature which apply to the following article or several articles, among others, are provisions that reflect the principles, purposes and objectives without being formulated separately in an article or chapter so that the general provisions may consist of several articles. However, the HPI Law still finds inconsistencies in the form of placement of principles and definition of a term outside the general provisions chapter. For example, the definition of marriage in the CHAPTER About the Family.

Furthermore, in terms of the language used in the HPI Law, it still does not meet the characteristics of the language of the laws and regulations, which include:

1. straightforward and definite so as to avoid similarity of meaning or confusion;
2. is sparing in character only the required words are used;
3. objective and suppress subjective feelings (not emotions in expressing goals or intentions);
4. standardize the meaning of words, expressions or terms that are used consistently;
5. provide accurate definitions or definitions;
6. writing words that have a singular or plural meaning is always formulated in the singular;
7. writing the initial letters of words, phrases or terms that have been defined or given definitions of definition, name of position, name of profession, name of government / state administration institution / institution, and types of Legislation and Legislation draft in the formulation of norms written in capital letters.



Thus, the HPI Law has not been able to provide a straightforward and definite formulation of content material that is word-saving. In fact, there are still inconsistencies in standardizing the meanings of the words / terms used where international and transnational terms are used in various parts of the HPI Law. Then, we discovered the use of the terms Internal Law and National Law which can be identified as having the same meaning restrictions. The use of the term HPI problem or case is also a source of inconsistencies found in the HPI Law.

Then in the Article reference technique, fundamental errors were also found, which were not in accordance with the techniques specified in the P3 Law. For example, in CHAPTER II General Principles of HPI International Civil Law, Article 7 paragraph (2) which formulates "... in implementing factual qualifications and legal qualifications as referred to in Paragraph (1) ..." where the reference formulation should be " ... In implementing fact qualifications as well as legal qualifications as referred to in paragraph (1) ... ".

Furthermore, overall based on the results of the observations that have been made, it was found that the referencing technique used was not in accordance with the referencing technique specified in the P3 Law. There is even reference to an article at the part after that article. Namely, the formulation of CHAPTER VIII BINDING refers to the special provisions stipulated in CHAPTER X. Whereas the reference to the article or paragraph which is located after the article or paragraph concerned must be avoided.

Such formal mistakes can be found in the formulation of the HPI Law. Moreover, the combined TRANSITIONAL PROVISIONS AND CLOSING CHAPTER, are clearly contrary to the formal form of statutory regulations. The author assesses that the HPI Law is currently very vulnerable in terms of constitutionality formal tests).

## 4 Conclusion

The proposal and formation of the HPI Law has validation of authority and justification of urgency, both because of legal needs because Indonesia is a state of law so it needs legal instruments. In addition, this urgency also arises because the formulation of the HPI in positive law can be seen as an effort to protect, recognize and provide legal certainty by the state against civil actions that are transnational in nature or involve foreign elements.

However, the formulation of material and formal values from the HPI Law must be reviewed. Because based on the brief observations that have been made. There were a number of material and formal discrepancies with the content of the HPI Law which had the potential or was vulnerable to undergoing constitutionality testing.

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